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March 2, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Room TW-A325
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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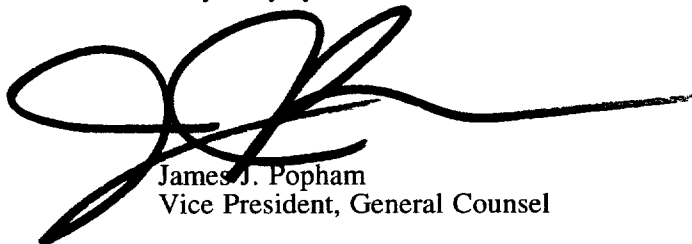
Re: ET Docket No. 98-206
RM-9147
RM-9245

Dear Ms. Salas:

We herewith submit on behalf of the Association of Local Television Stations, Inc., one diskette containing the comments of ALTV in the above-referenced proceeding. The disk accompanies an original and eight copies of the comments in paper form.

If the Commission has any questions about this matter, please, do not hesitate to contact us.

Very truly yours,



James J. Popham
Vice President, General Counsel

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the matter of

Amendment of Parts 2 and 25 of the
Commission's Rules to Permit Operation of
NGSO and FSS Systems Co-frequency with
GSO and Terrestrial Systems in the Ku-band
Frequency Range

and

Amendment of the Commission's Rules to
Authorize Subsidiary Terrestrial Use of the
12.2-12.7 GHz Band by Direct Broadcast
Satellite Licensees and Their Affiliates

ET Docket No. 98-206

RM-9147

RM-9245

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**COMMENTS OF
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

The following comments are submitted by the Association of Local Television Stations, Inc. ("ALTV"). ALTV is a non-profit, incorporated association of broadcast television stations unaffiliated with the ABC, CBS, or NBC television networks. Local stations among ALTV's members include not only traditional

independent stations, but also local television stations affiliated with the three emerging networks, Fox, UPN, and WB, and the new PaxTV network.¹

ALTV's singular and particular interest in this proceeding is the Northpoint proposal to allow retransmission of local television programming to DBS receivers.² At the outset, ALTV takes no position on the technical interference issues raised by Northpoint's proposal. On the one hand, ALTV would disfavor creating competition in a manner which also would create harmful interference to existing services. On the other hand, assuring that local television stations suffer no ill effects from discriminatory carriage by DBS providers is a significant benefit. Such benefits should be denied only if DBS providers themselves would suffer debilitating interference.

Otherwise, ALTV wishes to make two points. First, the Commission must appreciate that DBS providers appear unwilling to provide a full complement of local television station signals to their subscribers. Second, the Commission ought condition Northpoint's use of DBS frequencies on terms which require that all local television stations' signals be carried in any market where Northpoint uses DBS frequencies to provide video programming to consumers.

¹ As used herein, the term "local television stations" includes ALTV member stations, but excludes affiliates of ABC, CBS, and NBC.

²*Notice of Proposed Rule Making*, ET Docket No. 98-206 (released November 24, 1998) at ¶91 [hereinafter cited as *Notice*].

No DBS company appears intent on providing a full complement of local television stations' signals. EchoStar says it lacks capacity to carry all local signals and advances no plan to add the requisite capacity in the foreseeable future. Recent testimony by Charles Ergen of Echostar confirms the current inability of EchoStar's Dish Network to provide all local television stations' signals in the markets where it provides the so-called local-into-local service. In his testimony Mr. Ergen stated that EchoStar "will not have the space" to carry all local stations in each market.³ Consequently, as was the case with cable, satellite carriers like EchoStar are poised to provide a local-into-local service which includes only the big network affiliates. Whereas EchoStar boldly advertises carriage of the ABC, CBS, NBC, and Fox affiliates in markets where it is providing local signals, carriage of the local UPN, WB, or PaxTV affiliates and any independents is doubtful. Indeed, Mr. Ergen has testified that, "[W]e offer the four network stations, and in some cities a couple of independents as well."⁴ A visit to EchoStar's Dish Network website confirms that "the four network stations" are the only commercial stations carried in their local-

³Testimony of Charlie Ergen, before the Antitrust and Business Rights Subcommittee of the Senate Committee on the Judiciary (January 27, 1999) at 6. [Hereinafter cited as "Ergen Testimony"]. EchoStar's capacity shortage also is a function of EchoStar's decisions with respect to the aggregate number of channels devoted to local carriage and the allocation of those channels among markets. EchoStar has made a decision to use a finite portion of its overall capacity to provide a few signals to a substantial proportion of the nation's households. Alternatively, EchoStar might have provided all signals, but in fewer markets initially. Again, this is much more a function of EchoStar's business plan than any shortcoming in satellite distribution technology.

⁴Ergen Testimony at 6.

into-local markets.⁵ As for the local UPN, WB, and PaxTV affiliates, little or no carriage is contemplated.

DirecTV also has given no indication that it will offer any local-into-local service. It will provide local signals via outdoor antennas installed in conjunction with DBS dishes. This "solution" is far from adequate. Off-air viewers will enjoy none of the benefits of digital picture quality, none of the benefits of inclusion in the DBS on-screen program guide, and none of the benefits of seamless surfing. ALTV hardly is saying that anything is wrong with off-air reception. The true issue, though, is whether the competitor to ALTV member stations, an entrenched affiliate of a big network, will have advantages in access to consumers that are denied newer stations, including independents and affiliates of emerging networks.⁶

Finally, in this regard, the prospect of full local-into-local service from Local TV on Satellite, Inc., will remain just a prospect for at least several more years. Furthermore, initial service will be limited to the 68 largest markets.⁷ ALTV, therefore, submits that a genuine need does exist for alternate means of providing

⁵See, e.g., www.dishnetwork.com/programming/local/dc.htm.

⁶As Congress recognized in the channel positioning requirements in the must carry law, access alone often is insufficient. Many stations were carried, but on channels far removed from the major network affiliates, where consumers had trouble locating them.

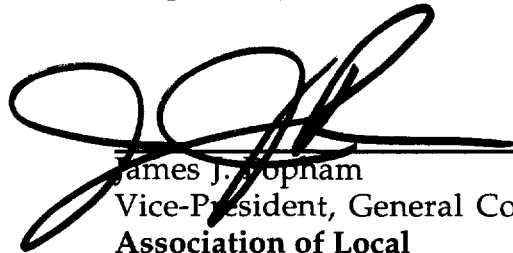
⁷See Statement of Local TV on Satellite, LLC, before the Subcommittee on Telecommunications, Trade, and Consumer Protection, Committee on Commerce, United States House of Representatives (February 24, 1999).

local signals to DBS subscribers. Northpoint offers a vehicle for filling that gap in DBS service.

ALTV also submits that Northpoint should be required to comply with a "must carry" type requirement as a condition of its use of DBS frequencies. In simplest terms, Northpoint would compound rather than solve the problem of full local-into-local service if it were permitted to carry local television stations' signals in a selective or discriminatory manner. The exclusion of stations other than affiliates of the major networks would come at a particularly bad time for emerging networks like UPN, WB, and PaxTV. Their struggle to compete with more established networks, the affiliates of which benefit from local satellite carriage, would be hampered. Furthermore, they likely also would be subject to competition from distant affiliates of their networks, which will enjoy all the benefits of picture quality and tuning ease on the satellite system. This would undermine the ability of new networks, their affiliates, and innovative independent stations to compete toe-to-toe with the ever expanding array of nonbroadcast program networks and services, as well as with their entrenched big three network competitors in their local markets. Thus, as is the case with the DBS providers, Northpoint's failure to carry all local signals would injure competition and compound the difficulties inherent in establishing new competitive broadcast networks.

ALTV, therefore, urges the Commission to give full consideration to Northpoint's proposal. It offers demonstrable public interest benefits, which may well outweigh the costs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Popnam', is written over a horizontal line.

James J. Popnam
Vice-President, General Counsel
**Association of Local
Television Stations, Inc.**
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March 2, 1999

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1 Diskette